PROGRAM MATERIALS
Program #3599
August 5, 2025

Fair Lending in 2025: New Regulations, Examinations and Enforcement

- Justin Muscolino - JTM Compliance Training
- Michael J DeBlis III, Esq. - DeBlis & DeBlis Law Firm

Celesq® AttorneysEd Center
www.celesq.com

5301 North Federal Highway, Suite 150, Boca Raton, FL 33487
Phone 561-241-1919

Fair Lending in 2025

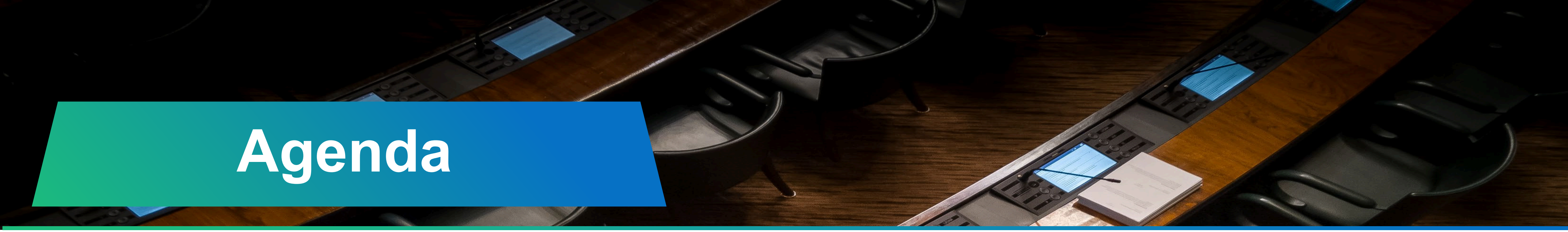
Speaker: Justin Muscolino,
JTM Compliance Training

Justin Muscolino

Justin brings over 20 years of wide-arranging experience in compliance training and regulations. He previously led the compliance training function for JPMorgan Chase Macquarie Group, UBS, Bank of China, and GRC Solutions. Justin also runs his own compliance training company focusing on US & International regulations providing real-life training.

Justin also worked for FINRA, a US regulator, where he created Examiner University to train examiners on how to perform their function. He also serves as an advisor for the Global Compliance Institute (GCI) and instructs at the Barret School of Business and various compliance training providers.

JTM Compliance
TRAINING



Agenda

- Overview of Fair Lending
  - Types of discrimination
- Fair Lending regulations
  - Fair Lending Program
- Latest regulatory updates
- The state of examinations
- Q&A

Part 1

Overview of Fair Lending

Fair Lending Overview

- Fair Lending is a group of laws and regulations prohibiting discrimination in the extension of credit to consumers.
- This includes credit extensions to businesses and residential real estate related transactions.
- The Department of Housing and Urban Development (HUD) enforces Fair Lending Laws and regulations.
- The regulations that form an umbrella for Fair Lending :
  - Fair Housing Act (FHA)
  - Equal Credit Opportunity Act (ECOA)
  - Community Reinvestment Act (CRA)
  - Home Mortgage Disclosure Act (HMDA)
  - Unfair, Deceptive or Abusive Acts or Practices (UDAAP)
  - Servicemembers Civil Relief Act (SCRA)
  - *Americans with Disabilities Act (ADA)

** The ADA is not a fair lending law or regulation. It is a civil rights law.*

JTM Compliance TRAINING

Illegal Discrimination

- Illegal discrimination takes place when individuals with a similar credit background are treated.
- This is based on personal characteristics such as age, sex, race, and marital status.
- These characteristics do not have anything to do with one's credit background.
- There are three types of illegal discrimination to be aware of:
  - Overt
  - Disparate treatment
  - Disparate impact
- All three types are important to understand and avoid as a lender may not even be aware, they are discriminating in certain cases.

Types of Illegal Discrimination

- It is important to understand the types of discriminations that can occur to fully evaluate fair lending risk.
- Overt discrimination may be blatant or obvious, but lenders should understand it can occur inadvertently.
- Disparate treatment is a risk where there are inconsistencies in a lender's lending practices.
- Disparate impact is application of an otherwise neutral policy that may be averse to one group, although it is applied consistently.
- Although the most common is disparate treatment, the other two are also legitimate risks and should not be ignored.

JTM Compliance
TRAINING

Overt Discrimination

- Overt discrimination occurs when a consumer is openly and/or actively discriminated against on a prohibited basis.
- Overt discrimination is the easiest to understand and is what most people think about when they hear the word “discrimination.”
- It is providing or offering more favorable terms to one group versus another based solely on a prohibited factor, such as gender.
- However, overt does not necessarily mean deliberate as overt discrimination can be unintentional.

Disparate Treatment

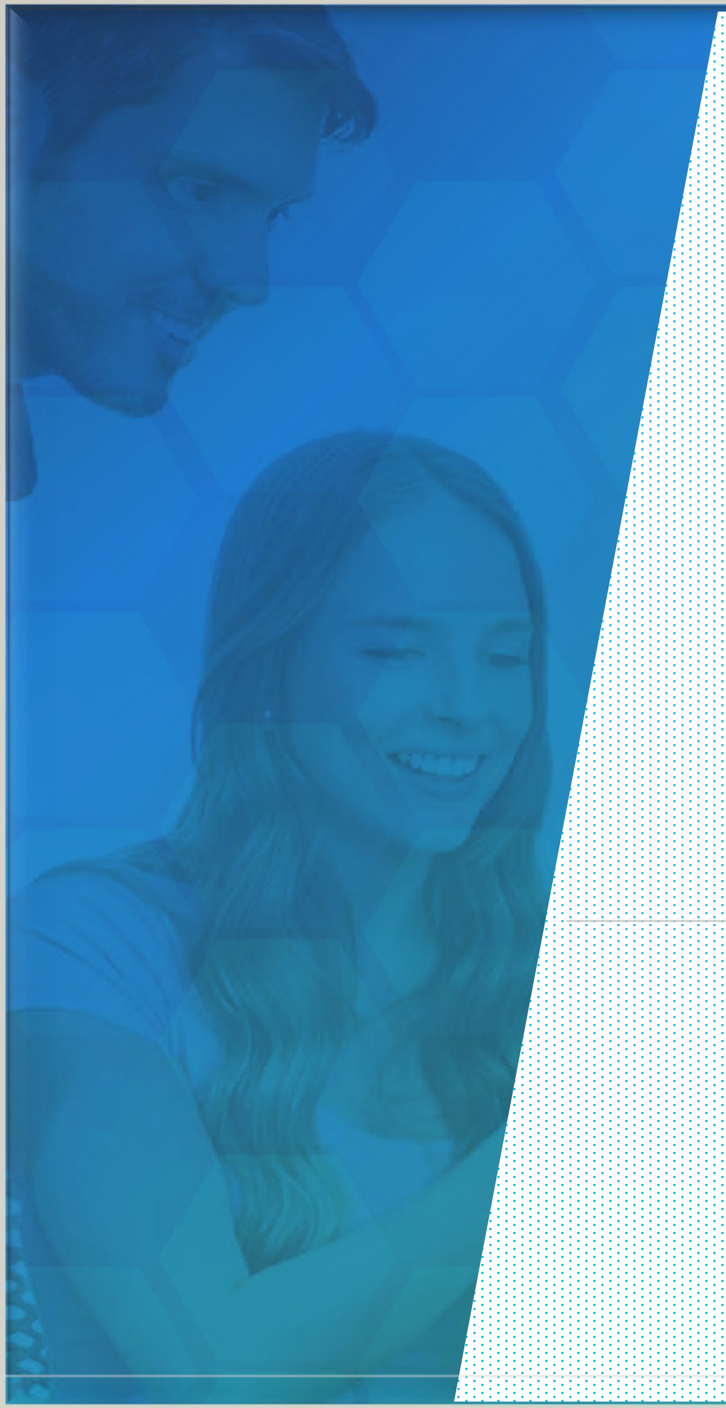
- Disparate treatment occurs when a lender treats applicants differently based on one of the prohibitive factors such as race, gender or age.
- Of the three types of discrimination, this is the most common and the most likely to be targeted in a fair lending review.
- Disparate treatment applies to a wide range of issues such as pricing, underwriting, or steering.
- Disparate treatment may be evaluated and tested by a file review or a statistical analysis of loan data.
- This may not be intentional as with overt discrimination but occurs unconsciously.

Disparate Impact

- Disparate impact can be understood by thinking of it as somewhat of the mirror image of disparate treatment.
- Disparate impact is where consistent application of a policy results in an adverse impact on a protected class.
- Disparate impact is controversial and has been the subject of much debate.
- The "disparate impact" of liability was meant to address practices that have the effect of discriminating.
- In communities or residential buildings with a history of segregation, or discrimination against specific groups, disparate impact theory is often relevant.

Predatory Lending, Red Lining

- Predatory lending typically means imposing unfair, deceptive, or abusive loan terms on borrowers.
- Predatory lending includes any unscrupulous practices carried out by lenders to entice, induce, mislead, and assist borrowers toward taking out loans they are unable to pay back reasonably or must pay back at a cost that is extremely above the market rate.
- Redlining is a discriminatory practice that puts services (financial and otherwise) out of reach for residents of certain areas based on race or ethnicity.
- The term "redlining" derives from how the federal government and lenders would literally draw a red line on a map around the neighborhoods where they would not invest based on demographics alone.



Part 2

Fair Lending Regulations

JTM Compliance
TRAINING

Overview

- Financial regulators examine financial institutions to ensure that they are adhering to bank compliance regulations.
- Failing to follow the fair lending compliance regulations can result in civil money penalties.
- In order to avoid the penalties of non-compliance with fair lending guidelines, financial institutions perform fair lending analyses.

Fair Housing Act (FHA)

- Fair Housing Act of 1968 limits discriminatory practices related to renting or buying a home, getting a mortgage, seeking housing assistance or other housing activities.
- This is enforced by the US Dept of Housing and Urban Development (HUD).
- There are seven classes protected under the FHA:
  - Color
  - Disability
  - Children under the age of 18
  - National origin
  - Race
  - Religion
  - Sex

Fair Housing Act (FHA)

- The Fair Housing Act prohibits discrimination by direct providers of housing, such as landlords and real estate companies as well as other entities, such as municipalities, banks or other lending institutions and homeowners' insurance companies whose discriminatory practices make housing unavailable to persons because of:
  - In cases involving discrimination in mortgage loans or home improvement loans, the Department may file suit under both the Fair Housing Act and the Equal Credit Opportunity Act.
  - The Department brings cases where there is evidence of a pattern or practice of discrimination or where a denial of rights to a group of persons raises an issue of general public importance.
- FHA also provides procedures for handling individual complaints of discrimination.

Fair Housing Act (FHA)

- Discrimination in Housing Based Upon Race or Color
  - Most of the mortgage lending cases under the Fair Housing Act and Equal Credit Opportunity Act have alleged discrimination based on race or color.
- Discrimination in Housing Based Upon Religion
  - The Act does contain a limited exception that allows non-commercial housing operated by a religious organization.

Community Reinvestment Act (CRA)

- CRA was enacted in 1977 to encourage lenders help in meeting the credit needs of the population in the communities.
- This includes low- and moderate-income neighborhoods.
- CRA is enforced by the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC) ad the Board of Governors of the Federal Reserve System.
- Lenders are required to collect and report data on their lending, investment and service practices to regulatory agencies for further analysis under CRA.

Community Reinvestment Act (CRA)

- The objective of the act was to strengthen existing laws that required banks to sufficiently address the banking needs of all members of the communities they served.
- CRA applies to FDIC-insured depository institutions, including national banks, state-chartered banks, and savings associations.
- Except for credit unions, they are backed by the National Credit Union Share Insurance Fund and other non-bank entities are exempt from the legislation.

JTM Compliance
TRAINING

Understanding CRA

- Before the Community Reinvestment Act U.S. banks denied mortgages to people of color who lived in certain.
- The maps were a tool for widespread racial discrimination.
- The immediate effect of redlining was that residents in these areas couldn't access credit to buy or improve housing.
- The CRA followed similar laws passed to reduce discrimination in the credit and housing markets including the Fair Housing Act of 1968, the Equal Credit Opportunity Act of 1974 and the Home Mortgage Disclosure Act of 1975 (HMDA).

Understanding CRA

- CRA require banks to make high risk loans that jeopardize their financial stability.
- To the contrary, the law makes it clear that a bank’s CRA activities must be consistent with the safe and sound operations conducted by the bank.
- CRA is designed to encourage banks to help rebuild and revitalize communities through sound lending.

Equal Credit Opportunity Act (ECOA)

- ECOA prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age, because an applicant receives income from a public assistance program, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act.
- The complete list includes:
  - Race
  - Color
  - Religion
  - National origin
  - Sex
  - Marital status
  - Age
  - Public Program Assistance

JTM Compliance TRAINING

Equal Credit Opportunity Act (ECOA)

- It prohibits creditors and lenders from considering consumers' race, color, national origin, sex/gender, religion, marital status, age.
- The law applies to any organization that extends credit, including banks, small loan and finance companies, retail and department stores, credit card companies, and credit unions.
- It also applies to anyone involved in the decision to grant credit or set its terms.

JTM Compliance
TRAINING

Equal Credit Opportunity Act (ECOA)

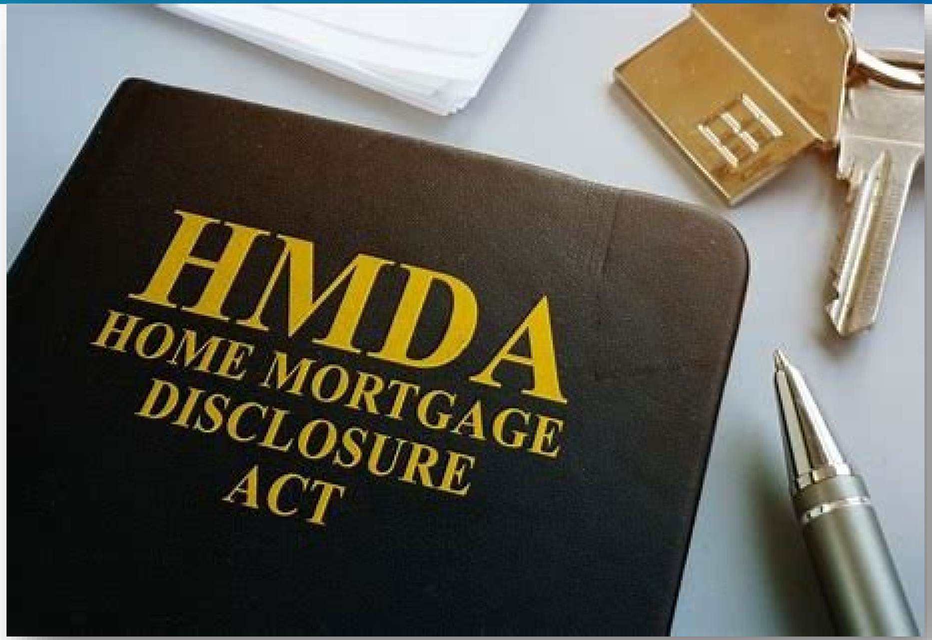
- When a borrower applies for credit, the lender may ask about some of the personal facts that are prohibited by the ECOA for use in making lending decisions.
- Another aspect of the ECOA allows each spouse in a marriage to have their own credit history.
- Some loans, such as mortgages, might require a borrower to disclose that they are making required alimony or child support payments.

Equal Credit Opportunity Act (ECOA)

- The act, as implemented by Regulation B, states that individuals applying for loans and other credit can only be evaluated using factors that are directly related to their creditworthiness.
- Regulation B is a rule that was created by the Federal Reserve to implement the Equal Credit Opportunity Act (ECOA).
- Regulation B defines unlawful discriminatory behavior and prohibits financial institutions that extend credit from engaging in certain activities before, during, and after an applicant applies for credit.
- All financial institutions that extend credit are required to abide by Regulation B.
- The ECOA covers various types of credit, including personal loans, credit cards, home loans, student loans, car loans, small business loans and loan modifications.

Home Mortgage Disclosure Act (HMDA)

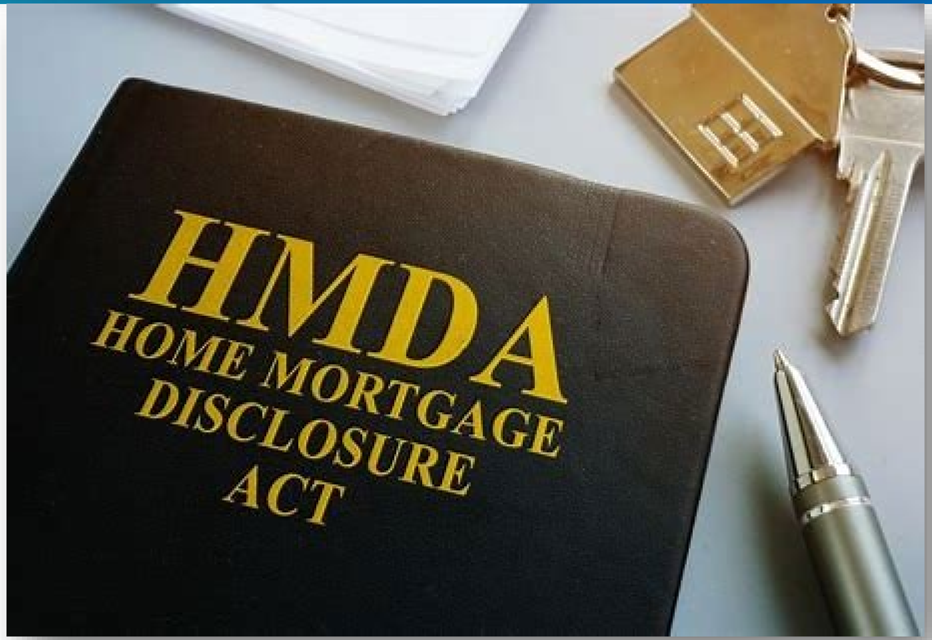
- HMDA is a federal act approved in 1975 that requires mortgage lenders to keep records of certain key pieces of information regarding their lending practices which they must submit to regulatory authorities. It was implemented by the Federal Reserve through Reg C.
- HMDA focuses on data collection and came about in 1975 from Regulation C.



JTM Compliance
TRAINING

Home Mortgage Disclosure Act (HMDA)

- HMDA requires lenders to collect data on residential loan applications secured by a dwelling to show if the are serving all areas where they do business.
- Race, sex, income and other loan statistics are tracked and reported.
- HMDA is enforced by the Consumer Financial Protection Bureau (CFPB).



JTM Compliance
TRAINING

HMDA Reporting

- Mortgage lenders are required to keep records relating to loan applications, such as the type of loan, gender of applicants, race, the income of the borrower, status of loan application (whether approved or denied), etc.
- Mortgage lenders who meet the required reporting criteria are required to submit yearly mortgage data to their regulatory authorities.
- The HMDA requires companies that meet the criteria to maintain a Loan Application Register (LAR).
- When a borrower applies for a residential mortgage, the lender must create an internal record and a corresponding entry in the Loan Application Register.
- HMDA data shows whether resources are allocated efficiently to benefit community initiatives.

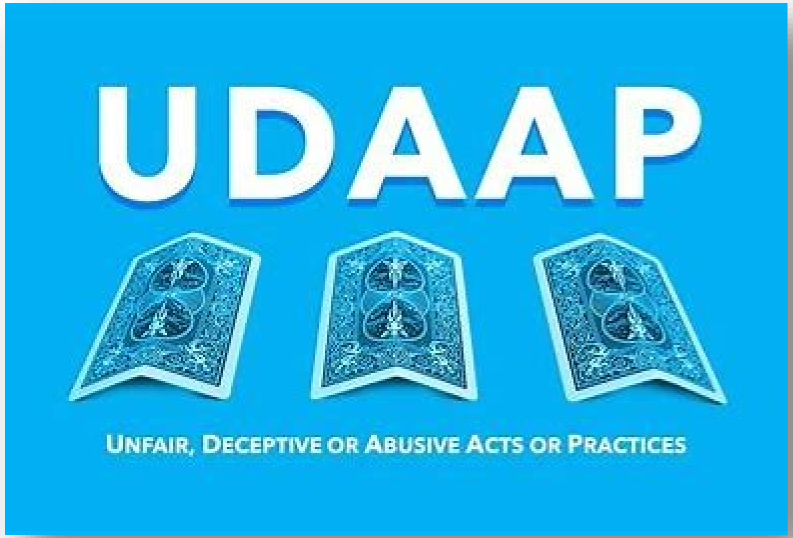
HMDA Reporting

- HMDA helps to support the community investment initiatives sponsored by government programs.
- HMDA helps government officials to identify any predatory lending practices which may be affecting mortgage loan issuance.
- HMDA requires lenders to collect data on residential loan applications secured by a dwelling.

UDAAP Overview

What is UDAAP?

- Unfair, deceptive, or abusive acts and practices (UDAAP) can cause significant financial injury to consumers, erode consumer confidence, and undermine the financial marketplace.
- Under Dodd-Frank Act, it is unlawful for any provider of consumer financial products or services or a service provider to engage in any unfair, deceptive, or abusive act or practice.
- The Dodd-Frank Act granted rulemaking authority regarding unfair, deceptive, or abusive practices to the Consumer Financial Protection Bureau (CFPB).



UDAAP Overview

- Unfair: Refers to actions that cause substantial harm to consumers, are not reasonably avoidable, and are not outweighed by benefits to consumers or competition.
- Deceptive: Involves misleading or false representations, omissions, or practices that can mislead consumers.
- Abusive: Encompasses practices that materially interfere with a consumer's ability to understand a product or service, take advantage of a consumer's lack of understanding, or take unreasonable advantage of a consumer's lack of choice or vulnerability.

UDAAP Overview

- Under the law, unfair practices do not have benefits to consumers or to market competition that would make the potential for harm a valid trade-off.
- The law generally does not cover emotional harm, except possibly in cases of excessive harassment.
- Financial product and service providers are not allowed to coerce or deceive consumers into making unwanted purchases, nor are they allowed to mislead consumers through specific statements or through a lack of clear and full disclosure.

UDAAP Overview

- The act or practice must cause or be likely to cause substantial injury to consumers.
- Consumers must not be reasonably able to avoid the injury.
- There must be a representation, omission, act, or practice that misleads or is likely to mislead the consumer.
- The representation, omission, act, or practice must be considered from the perspective of a reasonable consumer.
- The representation, omission, or practice must be material.

JTM Compliance
TRAINING

Truth in Lending Act (TILA)

- The Truth in Lending Act (TILA), enacted in 1968, is a federal law designed to protect consumers from unfair lending practices.
- It requires lenders to provide clear and standardized information about the terms and costs of credit, ensuring that borrowers can make informed decisions.
- TILA is enforced by the Federal Trade Commission and is implemented through Regulation Z, which outlines specific disclosure requirements for lenders.

Truth in Lending Act (TILA)

- For TILA information that must be disclosed to a borrower before extending credit, such as the annual percentage rate (APR), the term of the loan, and the total costs to the borrower.
- This information must be conspicuous on documents presented to the borrower before signing and in some cases on the borrower's periodic billing statements.
- The rules are designed to make it easier for consumers to comparison shop when they want to borrow money or take out a credit card and safeguard them from misleading or unfair practices on the part of lenders.
- Some states have their own variations of a TILA, but the chief feature remains the proper disclosure of key information to protect the consumer, as well as the lender, in credit transactions.

JTM Compliance
TRAINING

Americans with Disabilities Act (ADA)

- The Americans with Disabilities Act (ADA) enacted in 1990.
- The Americans with Disabilities Act (ADA) is not a fair lending law or regulation.
- It is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life, including employment, education, transportation, and access to public spaces
- It protects those with disabilities from discrimination by private employers, state and local governments, employment agencies, and labor unions.
- This law is enforced by the US Department of Justice (DOJ).

JTM Compliance
TRAINING

Americans with Disabilities Act (ADA)

- A person with a disability can be someone who:
  - Has a physical or mental impairment
  - Has a record of such impairment, or
  - Is a person regarded as having such an impairment.
- As a business and employer, an organization must make a reasonable accommodation for the job or work environment.

Fair Lending Program

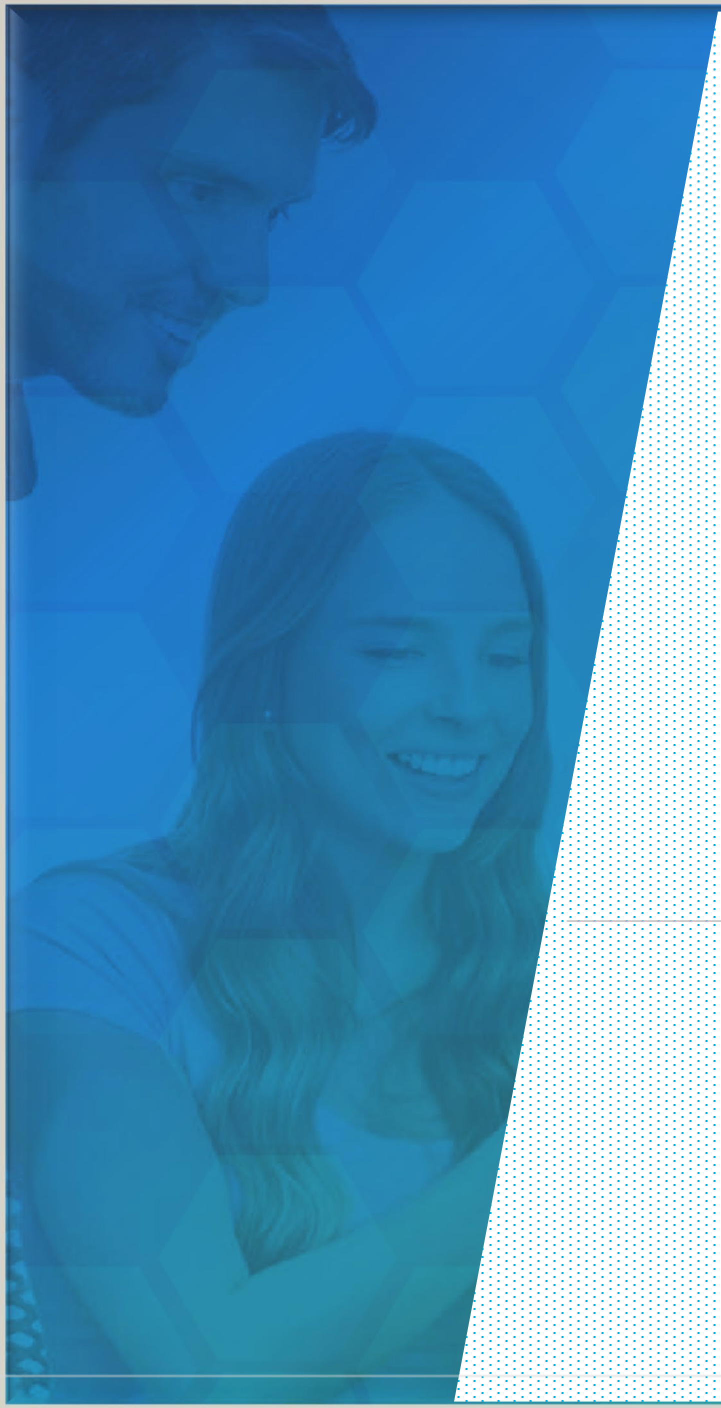
- An effective fair lending program establishes a culture of nondiscrimination and includes policies, procedures, and risk assessments that evolve with the nature of financial institutions' products and services.
- Financial institutions should establish a robust program that includes exception monitoring, secondary review, training, and consumer complaint monitoring, and the program should be commensurate with your institution's risk profile.
- Fair lending compliance management is no simple task.
- Hundreds of pages of regulations, evolving rules and complex nuances mean that managing fair lending compliance could be a full-time job.

JTM Compliance
TRAINING

Fair Lending Program: Identifying Risk

Fair Lending Risk Factors

- Risk factors commonly associated with higher fair lending risk include:
- Substantial discretion to make decisions on transactions or properties
- Lack of clear policies, procedures, business rules, or decision criteria
- Use of factors in decision-making that are subjective rather than objective
- Use of geographic factors or different treatment of geographies
- Policies impacting outcomes that lack clear business justification
- Policies impacting outcomes that have not undergone review for effectiveness or need for a significant period of time
- Compensation criteria or other incentives that could lead to disparities in outcomes
- Reliance on third parties without appropriate oversight
- Consumer complaints
- Employee statements indicating aversion to doing business in certain areas with relatively high concentration of residents sharing a protected class characteristic



Part 3

Fair Lending Updates

JTM Compliance TRAINING

Enforcement Actions: Predatory Lending

US DOJ, consumer bureau sue Texas developer for predatory lending

Federal prosecutors and the top U.S. agency for consumer financial protection are suing a Texas real estate developer they accused of targeting thousands of Hispanic borrowers in a fraudulent land sale scheme, they announced on Wednesday.

The case was brought jointly with the U.S. Consumer Financial Protection Bureau, which said the case was the agency's first federal lawsuit charging violations of the Interstate Land Sales Full Disclosure Act.

Colony Ridge, the real estate developer located in Liberty County, Texas about 30 miles (48 km) northeast of Houston, did not immediately respond to a request for comment.

"Colony Ridge promised the American dream, but we allege that in reality, it has delivered a nightmare for thousands of hardworking Hispanic families who hoped to build their homes in the Terrenos Houston community," she said in a statement.

According to Wednesday's announcement, federal officials say the company sold unaffordable loans so unsuspecting families could purchase flood-prone land that had no connections to sewage lines or other utilities. After foreclosure, the company then allegedly resold plots to new buyers.

Fair Housing Rating System

- Fair Lending and Fair Housing Rating System
  - This Enterprise Fair Lending and Fair Housing Rating System is a risk-focused rating system under which each Enterprise is assigned a composite rating based on an evaluation of its fair lending compliance practices and outcomes.
  - The rating system is a framework for annually assessing an Enterprise's compliance with fair lending and fair housing standards and furtherance of equity in the public interest.
  - Specifically, the composite rating of an Enterprise is based on an evaluation and rating of four components:
    - Enterprise Operations and Efficacy,
    - Fair Lending Oversight Program,
    - Supervision Process and Legal Compliance, and
    - Equitable Housing Finance.

JTM Compliance TRAINING

Fair Lending for All Act

- Fair Lending for All Act
  - To establish an Office of Fair Lending Testing to test for compliance with the Equal Credit Opportunity Act (ECOA),
    - to ensure that persons injured by discriminatory practices, including organizations that have diverted resources to address discrimination can seek relief and to provide for criminal penalties for violating the Act
    - aims to modify provisions related to prohibited credit discrimination. It adds sexual orientation, gender identity, and an applicant's location based on zip code or census tract as protected classes against discrimination in credit transactions.

Fair Lending for All Act

- Fair Lending for All Act
  - ECOA and the Fair Housing Act (FHA), prohibit discrimination in credit transactions, including those related to residential real estate. The proposed act seeks to further strengthen these protections by explicitly including additional criteria to prevent unfair and discriminatory practices in lending.
  - Fair Lending for All Act aims to promote equal access to credit and ensure that financial institutions treat all applicants fairly, regardless of their sexual orientation, gender identity, or geographic location.

Source

CRA Modernization

- Federal bank regulatory agencies issued a final rule to strengthen and modernize regulations implementing the Community Reinvestment Act (CRA) to better achieve the purposes of the law.
- The CRA is a landmark law enacted nearly 50 years ago to encourage banks to help meet the credit needs of their entire communities, especially in low– and moderate–income (LMI) neighborhoods, in a safe and sound manner.
- Most of the final rule's new requirements are applicable beginning January 1, 2026. The remaining new requirements, including data reporting requirements, are applicable on January 1, 2027.

JTM Compliance
TRAINING

CRA Modernization: Goals

- Building on feedback from commenters on the proposed rule and research, the final rule updates the CRA regulations to achieve the following key goals:
  - Encourage banks to expand access to credit, investment, and banking services in LMI communities.
  - Under the final rule, the agencies will evaluate bank performance across the varied activities they conduct and communities in which they operate so that the CRA continues to be a strong and effective tool to address inequities in access to credit and financial services.
  - It promotes financial inclusion by supporting bank activities with Minority Depository Institutions and Community Development Financial Institutions and in Native Land Areas, rural areas, persistent poverty areas, and other high–need areas.

CRA Modernization: Goals

- Building on feedback from commenters on the proposed rule and research, the final rule updates the CRA regulations to achieve the following key goals:
  - Adapt to changes in the banking industry, including internet and mobile banking.
  - The final rule will update the CRA regulations to evaluate lending outside traditional assessment areas generated by the growth of non–branch delivery systems, such as online and mobile banking, branchless banking, and hybrid models.
  - It is calibrated to recognize the continued importance of bank branches, while establishing a framework to evaluate the digital delivery of banking products and services for certain banks.

CRA Modernization: Goals

- Building on feedback from commenters on the proposed rule and research, the final rule updates the CRA regulations to achieve the following key goals:
  - Provide greater clarity and consistency in the application of the CRA regulations.
  - The final rule adopts a new metrics–based approach to evaluating bank retail lending and community development financing, using benchmarks based on peer and demographic data.
  - The agencies will develop data tools using reported loan data that give banks and the public additional insight into performance standards.
  - The final rule also clarifies eligible CRA activities, such as affordable housing, that are focused on LMI, underserved, native, and rural communities.

CRA Modernization: Goals

- Building on feedback from commenters on the proposed rule and research, the final rule updates the CRA regulations to achieve the following key goals:
  - Tailor CRA evaluations and data collection to bank size and type. The final rule recognizes differences in bank size and business models.
    - For example, small banks will continue to be evaluated under the existing framework with the option to be evaluated under the new framework.
  - The rule also exempts small and intermediate banks from new data requirements that apply to banks with assets of at least $2 billion and limits certain new data requirements to large banks with assets greater than $10 billion.

NCUA Strategic Plan

NCUA Diversity, Equity, Inclusion, and Accessibility Strategic Plan 2024 – 2026

- The published data contain loan-level information filed by financial institutions and modified to protect consumer privacy.
- The strategic plan outlines the agency’s efforts regarding workforce diversity, employee inclusion, workplace resolutions, supplier diversity, and credit union diversity that will support the NCUA’s strategic objectives over the next several years.

NCUA Strategic Plan

NCUA Diversity, Equity, Inclusion, and Accessibility Strategic Plan 2024 – 2026

- Strategic Goal 1 Promote diversity
- Strategic Goal 2 Eliminate barriers to equity
- Strategic Goal 3 Cultivate a culture of inclusion
- Strategic Goal 4 Promote and advance accessibility

Examinations

- Review of specialty areas. Examiners are also required to ensure a bank is meeting its legal obligations in the following areas
- Asset Management - includes trust and fiduciary activities, fiduciary-related services, transfer agent activities, and retail brokerage.
- Bank Information Technology (BIT) - determining that the electronic records produced by a bank’s automated systems are valid and reliable.
- Bank Secrecy Act (BSA) - verifying that a bank is keeping accurate records and filing necessary reports about currency transactions. Includes anti-money laundering measures and counter-terrorist financing measures.
- Community Reinvestment Act (CRA) - the CRA requires that a bank's record in helping meet the credit needs of its entire community be evaluated periodically.

JTM Compliance
TRAINING

Violations

- What do you think would happen if a bank violates these rules?
  - Failing to follow the fair lending compliance regulations can result in civil money penalties, restrictions on branching and significant reputational damage for an institution.
  - Discriminatory lending can lead to legal and reputational risks for a financial institution. I will provide an overview of these regulations and their intended purpose for eliminating poor lending practices.
  - There are six fair lending risks banks and similar types of institutions face: underwriting, pricing, steering, redlining, marketing and loan servicing.
  - For each of these risks, institutions may perform analyses to assess their risks. The typical types of fair lending analyses include:
    - compliance management system evaluations,
    - risk assessments and
    - regression analyses.

THANK YOU!

JTM Compliance Training:

- Email: Justin@jtmcompliancetraining.com
- Website: Jtmcompliancetraining.com

JTM Compliance
TRAINING